

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 14, 2011

In the Matter of WINES, Minor.

No. 300178

Calhoun Circuit Court

Family Division

LC No. 2009-003005-NA

Before: O'CONNELL, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order's terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g) and MCL 712a.19b(5). We affirm.

Respondent does not contest the statutory grounds for termination of her parental rights, but argues her right to due process was violated and the trial court erred when it found termination of parental rights was in the minor child's best interests without requiring petitioner to place the child in the home of her previously adopted sibling. Respondent requests that this Court set aside the termination order until the trial court addresses and decides whether pre-adoption placement of the minor child with her sibling's family is in her best interests.

I. FACTS AND PROCEDURAL BACKGROUND

In late 2007 or early 2008, respondent released her parental rights to a newborn son who was born positive for cocaine and marijuana, and she consented to his private adoption by a family in Eaton County without commencement of a child protective proceeding. The minor child who is the subject of this proceeding was born 17 months later, also positive for cocaine and marijuana, but, unlike with her son, respondent chose to pursue reunification. Four months' services did not reduce the child's risk of harm in respondent's care and thus, protective services placed her in a Calhoun County licensed foster home in September 2009. Petitioner did not pursue placement in the adopted sibling's home because it was not a licensed foster home or a relative placement, and because respondent initially requested investigation of three relatives' homes for placement. The relatives were later denied placement and respondent did not again raise the subject of placing the minor child with the sibling's family until nearly eight months after removal, at the April 2010 team decision meeting, when it became apparent respondent could not conquer her drug addiction and termination became petitioner's goal. At that team decision meeting, petitioner told respondent the sibling's parents would be eligible to apply for adoption if respondent's parental rights were terminated. The minor child's foster parents had, however, also indicated a desire to adopt the minor child.

At the June 2010 permanency planning hearing, counsel for respondent and an attorney hired by the sibling's parents requested that the trial court, instead of ordering petitioner to file a petition requesting involuntary termination of respondent's parental rights, accept respondent's consent to a statutory ground to terminate her parental rights conditioned upon the minor child's direct placement with the sibling's parents for adoption. The trial court concluded that a direct placement under the Adoption Code, MCL 710.21, *et seq.*, was not an available option because the proceeding at hand was governed by the Juvenile Code, MCL 712A.1, *et seq.* Respondent thereafter withdrew her offer to consent to a statutory ground for termination and the trial court ordered petitioner to file a termination petition. Respondent's parental rights were involuntarily terminated at a termination hearing held September 7, 2010, at which the trial court found a statutory ground for termination and that termination was in the minor child's best interests.

II. DUE PROCESS

Respondent argues on appeal that her liberty interest in the child's care, custody and management still remain notwithstanding the child's temporary wardship, and that denying her the ability to direct her child's placement violated due process. "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decision maker." *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). Respondent argues that petitioner's failure to follow its own placement procedure, and the trial court's finding that termination was in the child's best interests without considering respondent's plan for direct placement with the sibling's parents violated her due process right to be heard in a meaningful time and manner regarding her child's custody. We disagree.

The evidence showed respondent did not object to the child's initial placement or request review of the placement in the trial court as allowed by MCR 3.966(B),¹ and did not assert a

¹ MCR 3.966(B) provides,

Petitions to Review Placement Decisions by Supervising Agency.

(1) General. The court may review placement decisions when all of the following apply:

(a) a child has been removed from the home;

(b) the supervising agency has made a placement decision after identifying, locating, and consulting with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to nonrelative foster care;

(c) the supervising agency has provided written notice of the placement decision;

violation of due process when the trial court found at the permanency planning hearing that her request for the child to be directly adopted by her sibling's family was not a viable option under the Juvenile Code. Respondent's unpreserved claim of constitutional error is reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). An error affects substantial rights if it causes prejudice, meaning that it affects the outcome of the proceedings. *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008).

Respondent received an opportunity to have her preference for the minor child's placement heard and addressed in a meaningful time and manner at the time of removal in September 2009 and at the April 2010 team decision meeting. Respondent's request for the minor child's direct placement with the sibling's family for the purpose of adoption was addressed at the June 2010 permanency planning hearing when she first suggested the placement, and the trial court correctly found it was not an option available under the Juvenile Code. Direct placement for the purpose of adoption is available under the Adoption Code.² Respondent was

(d) a person receiving notice has disagreed with the placement decision and has given the child's lawyer-guardian ad litem written notice of the disagreement within 5 days of the date on which the person receives notice; and

(e) the child's lawyer-guardian ad litem determines the decision is not in the child's best interest.

(2) Petition for Review. If the criteria in subrule (1) are met, within 14 days after the date of the agency's written placement decision, the child's lawyer-guardian ad litem must file a petition for review.

(3) Hearing on Petition. The court must commence a review hearing on the record within 7 days of the filing of the petition.

² The Adoption Code defines direct placement adoption in MCL 710.22(o):

"Direct placement" means a placement in which a parent or guardian selects an adoptive parent for a child, other than a stepparent or an individual related to the child within the fifth degree by marriage, blood, or adoption, and transfers physical custody of the child to the prospective adoptive parent.

MCL 710.23a allows for direct placement of a child, stating in part,

(1) A parent or guardian having legal and physical custody of a child may make a direct placement of the child for adoption by making a temporary placement under section 23d of this chapter or a formal placement under section 51 of this chapter. A temporary placement becomes a formal placement when the court orders the termination of the rights of the parent or parents or the guardian and approves placement under section 51 of this chapter. A formal placement under section 51 of this chapter is not required to be preceded by a temporary placement.

allowed to voluntarily consent to grounds for termination of her parental rights under the Juvenile Code, *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992), but such consent would not transform the proceeding into one under the Adoption Code. Even if proceeding under the Adoption Code, respondent lacked physical custody of the child required to make a direct placement. MCL 710.23a(1).

Respondent argues petitioner should have suggested to respondent or sua sponte placed the child with her sibling pursuant to rules in petitioner's Children's Foster Care Manual requiring it to discuss all known placement options with respondent, give respondent's preference for placement considerable weight, attempt to facilitate respondent's preferences, and preserve the sibling bond by requiring siblings entering placement at nearly the same time to be placed together unless contrary to their well-being. 2010 State of Michigan Children's Foster Care Manual: FOM 722-3, pp 1-4. However, the evidence showed petitioner did consult with respondent regarding placement and investigated relatives she suggested. Placement with a sibling is only one of many factors, and the Manual states all factors must be considered. *Id.* at 1. Petitioner's decision not to investigate the sibling's family for placement was made for legitimate reasons, including that respondent desired placement with a relative, the sibling's family was not related to respondent, the family also lacked a foster care license, and petitioner's placement decision did not violate procedure and did not constitute error affecting respondent's right to be heard in a meaningful time and manner regarding her child's placement.

III. BEST INTERESTS

Respondent also argues the minor child's interests would have been best served by pre-adoptive placement with her sibling's adoptive family, and the trial court erred in terminating respondent's parental rights without considering or requiring petitioner to comply with that option. We disagree. As noted above, petitioner did not err in its placement procedure, and the trial court correctly found a direct placement for adoption under the Adoption Code was not an option several months into the child protective proceeding. At the termination hearing, the trial court found clear and convincing evidence of more than one statutory ground to terminate respondent's parental rights, and was required to terminate her parental rights if it found it in the minor child's best interests in accordance with MCL 712A.19b(5), which provides:

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

The trial court's best interest decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

The trial court did not clearly err in finding that termination of respondent's parental rights was in the minor child's best interests without first considering whether the minor child

(2) A parent or guardian shall personally select a prospective adoptive parent in a direct placement. The selection shall not be delegated.

should be placed with the sibling's family. The evidence contained in the entire record demonstrates that respondent could not rehabilitate and achieve reunification within a reasonable time and the child's need for stability and permanence were met in her current foster home. Moreover, the child's bond with respondent had diminished due to missed visits. Ultimately, respondent's plan for the child's direct placement with her sibling's family was not a viable option, and the sibling's parents were only eligible to apply for the child's adoption after termination of respondent's parental rights.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly
/s/ Amy Ronayne Krause